



**Fw: EPA Dive Report attached ...3 of 4**

**Dianne Soderlund** to: Richard Cool

02/14/2013 04:07 PM

History: This message has been forwarded.

per our conversation

Dianne Soderlund, Director  
Alaska Operations Office  
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----- Forwarded by Dianne Soderlund/R10/USEPA/US on 02/14/2013 03:06 PM -----

From: Russ Maddox <russtmaddox@Exemption 6>  
To: Dianne Soderlund/R10/USEPA/US@EPA  
Date: 02/14/2013 06:58 AM  
Subject: EPA Dive Report attached

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**From:** Russ Maddox <russtmaddox@Exemption 6>  
**To:** "Soderlund.Dianne@epamail.epa.gov" <Soderlund.Dianne@epamail.epa.gov>; Kristin Ryan <Ryan.Kristin@epamail.epa.gov>  
**Sent:** Wednesday, February 13, 2013 4:28 PM  
**Subject:** Seward Coal Loading Facility  
Hi Diane and Kristin,

I wanted to follow up about the recently unearthed dive report and the state's troubling interpretation of the Clean Water Act and offer a some actions for you to consider taking to help amend the situation..

The Seward Coal Loading Facility operates under a Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity. That permit and the facility's authorization under it were originally issued by you, and are now administered by the state. The facility does not have a permit that authorizes the direct discharge of coal into Resurrection Bay, including discharges from the conveyor and ship loader that extend over Resurrection bay.

The facility is arguing in Federal District Court that the Stormwater General Permit authorizes the non-stormwater discharge of coal into the bay, including discharges that occur outside of precipitation events. These discharges are not identified as authorized discharges in the Stormwater General Permit. However, the facility is arguing that the Stormwater Permit shields them from any challenge for discharging non-stormwater without a permit. The facility is further arguing that because EPA was aware of the non-stormwater discharges (as purportedly indicated by a 1987 EPA dive report that found coal in Resurrection Bay under the conveyor), the facility is shielded from any challenge.

Alaska DEC's Deputy Commissioner provided a declaration in the Seward case in support of the facility's arguments that the facility does not need a permit for direct discharges because they have a Stormwater Permit. I am attaching both the Defendant's brief and the declaration from DEC's Deputy Commissioner. DEC's opinion that a Stormwater Permit provides a shield for non-stormwater discharges is counter to the requirements of the CWA. DEC and the facility are attempting to extend the permit shield doctrine to cover discharges that have not previously been covered under the permit shield doctrine.

Action by EPA that clarifies the intent of the CWA, the requirements of Section 402, and the limited scope of the permit shield would help achieve the proper result in the Seward case, and would limit DEC's attempts to expand the permit shield. If EPA can respond with haste, for example by submitting a letter to DEC clarifying the limited scope of the permit shield, it could influence this case prior to the judge reaching a finding on summary judgment. Oral argument on cross motions for summary judgment is scheduled for March 6. If the judge rules in the facility's and DEC's favor on the permit shield question, we will seek

additional EPA involvement to avoid a dangerous precedent drastically expanding the scope of the permit shield.

I really appreciate you both taking time to consider this situation. Please share this with Dennis McClerran, too. Thanks for all of your efforts on behalf of our environment.

Regards, Russ



EPA dive report.pdf